

### Purpose and Scope

The federal government, over a number of years, has passed numerous civil rights laws protecting individuals from discrimination and harassment based on race, color, sex, religion, creed, age, national origin, marital status, disability status, and Vietnam Era Veteran and disabled veteran status.

Even before the federal government took this action, the Washington State Legislature passed RCW 49.60, the Washington State Law Against Discrimination. Over the years, this law has been amended to include protection against discrimination and harassment based on race, creed, color, national origin, families with children, sex, marital status, age, or the presence of any sensory, mental, or physical disability or the use of a trained guide dog or service animal by a disabled person and sexual orientation.

The Washington State Department of Transportation (WSDOT) prohibits any type of inappropriate behavior that could be considered harassment. However, this chapter is limited to forms of discrimination or harassment (e.g., based on race, color, creed, religion, gender, national origin, age, sexual orientation, marital status, Vietnam-era veteran status, disabled veteran status, or presence of a physical, mental, or sensory disability) prohibited by the various civil rights laws listed at the end of this chapter and in Chapter 12 of the *Equal Opportunity Desk Manual*, (M 04-15).

The department is committed to creating and maintaining a work environment in which all employees are treated respectfully and are free from discrimination and harassment due to race, creed, religion, color, national origin, age, sex, sexual orientation, marital status, status as a disabled or Vietnam-era veteran, or the presence of any form of disability. To this end, all employees are expected to refrain from acts or omissions that constitute discriminatory or harassing behavior in the workplace and at department-sponsored events, and to comply with department rules, policies and procedures contained in Chapter 1 of the *Equal Opportunity Desk Manual*.

The department procedure for reporting and resolving discrimination or harassment complaints based on protected group status is designed to encourage employees to report incidents as soon as they occur. The Washington State Department of Transportation (WSDOT) Office of Equal Opportunity (OEO) is delegated the authority by the Secretary of the Department of Transportation to conduct all administrative investigations of alleged violations of department rules, policies and procedures contained in the *Equal Opportunity Desk Manual*. All complaints will be handled in a prompt, thorough, and respectful manner. Complaints and resolutions will be handled as discretely as possible. Moreover, retaliation will not

be tolerated against any person who reports alleged violations of discrimination or harassment or who participates in a protected activity such as, an investigation, resolution or request for an accommodation.

The appointing authority will make the final decision as to whether or not there is misconduct and take appropriate corrective/disciplinary action where such action is warranted, and report that action to OEO. It is the responsibility of the appointing authority to consider the totality of the circumstances and evidence; examine the employee's overall work history in deciding the appropriate course of action. Corrective/disciplinary actions taken must be reported to the Office of Equal Opportunity for reporting purposes to the Federal Highway Administration. Refer to the WSDOT *Human Resource Desk Manual*, M 3009.00, "Corrective Action" chapter for more detailed information or the Human Resource manual for the Washington State Ferries and/or the appropriate bargaining agreement.

## **Authority of the Office of Equal Opportunity**

By authority of the Secretary of Transportation, for the purpose of fulfilling official duties, the Director of the Office of Equal Opportunity (OEO) and associated staff are authorized to have access to all internal records, including, but not limited to safety, medical, financial, personnel, and administrative documents, equipment, facilities, and employees, for the purpose of conducting administrative investigations of alleged violations as covered in the *Equal Opportunity Desk Manual*.

In addition, representatives of the office will have access to all applicable records of parties having contractual agreements for providing goods or services, or who are the recipient of funding, either directly or indirectly provided by the agency, subject to contractual and statutory language covering those activities, for the purposes of conducting administrative investigations.

## **Responsibilities**

**The Director of OEO**, acting on behalf of the Secretary of Transportation, is charged with the role as consultant, educator, information resource and policy analyst advisor, as well as maintaining a program of internal and external civil rights.

In fulfilling these responsibilities, the Director of OEO is responsible for the development of procedures necessary to carry out this complete program, including advising executive management of their responsibilities and duties when responding to the various investigations, evaluations, consultations, and analyses conducted by the office.

The following are responsibilities of the Director of OEO and are delegated to the **OEO Diversity Programs Administrator (DPA)**:

It is the responsibility of the DPA to ensure that appropriate rules and procedures are established, so as to comply with Governor's Executive Order 98-02, Training and Protocols for State Investigators.

It is the responsibility of the DPA to ensure that all investigations conform to the highest standards of ethical conduct.

It is the responsibility of the DPA to ensure all investigations will be conducted objectively, impartially and free of any impediment or obstruction by any employee of this agency.

It is the responsibility of the DPA to ensure all complaints and/or allegations made will be assigned a case number, so as to provide a tracking system of accountability.

It is the responsibility of the DPA to review and approve all investigative reports and findings submitted by investigators..

It is the responsibility of **managers and supervisors** to report suspected violations of agency OEO policies cited in Chapter 1 of this Desk Manual.

**Managers and supervisors must report to OEO suspected violations of the sexual harassment policy**, even if the complainant does not wish to file a complaint. It is the responsibility of the **investigator** to conduct all investigations in keeping with the highest standards of confidentiality and ethical behavior.

It is the responsibility of the investigator to be the case manager for all investigations under the jurisdiction of OEO, as assigned.

It is the responsibility of the investigator to submit an independent and impartial report and findings with respect to the policy elements and the established fact(s) of the case.

## **Definitions**

**Administrative Investigation** is defined as the process used to gather facts through interviews, documents or other physical evidence that support or does not support a complaint or report of an alleged act(s) of or an omission(s) of misconduct pertaining to department rules, policies and procedures contained in the *Equal Opportunity Desk Manual*. The investigation seeks to determine or report the truth and all the facts, both favorable and unfavorable, in order that management will have all the available facts to render a fair decision.

**Investigator** is defined as a state employee or contractor acting as an agent of the state whose duties require him or her to conduct an administrative investigation on a complaint(s), in order to determine the following:

**Complaint** is defined as an alleged violation of OEO Policies.

**Department Directed Inquiry** is a request by management to conduct an informal inquiry or formal investigation of an alleged violation of an OEO Policy.

**Complainant** is defined as the person alleging conduct that may be a violation of an OEO policy.

**Respondent** is defined as the person accused of alleged conduct that may be a violation of an OEO policy.

WSDOT recognizes the following principles:

- Investigators should be trained to comply with Executive Order 98-02.
- The DPA may approve investigations outside the scope and authority of OEO as requested. Investigators should know what matters lie beyond their authority, and when, how and to whom those matters should be referred.
- Investigators should know how to competently gather and preserve evidence.
- Investigators should know and respect the rights of those they investigate and those from whom they seek to gather information.
- State agency investigators, as public employees, have a duty to maintain the highest standards of ethics and respect for the public.
- Investigators should practice sound case management.
- Civil investigators perform an essential service to the people of the state.

### **Department Directed Inquiry (DDI)**

In order to provide and maintain a workplace free from discrimination or harassment, the department may pursue an investigation of allegations of misconduct pertaining to department rules, policies and procedures contained in the *Equal Opportunity Desk Manual* with or without the express permission from the complainant. Management may request an investigation or an informal inquiry if a policy violation of discrimination or harassment is suspected. **However, managers and supervisors must report suspected violations of the sexual harassment policy to OEO.** When in doubt, the supervisor should contact OEO for assistance.

### **Initial Communications**

When an individual believes they have been subjected to discrimination or harassment due to their race, religion, color, creed, national origin, age, sex, sexual orientation, marital status, status as a disabled veteran or Vietnam-era veteran, or the presence of any form of disability, they have numerous options. The quickest, and normally most effective, option is to simply tell the offender about his or her behavior, explain what they are doing that is disturbing and ask that this behavior stop. This may be done either in person or in writing.

**If an individual does not want to confront the offender or if they have confronted the offender and the offensive behavior has not stopped, or if they believe the complaint has, or will, result in retaliation, the person should contact an OEO representative to discuss the options described below.**

## Intake Procedures

Before deciding which avenue to use to resolve a complaint, the individual must have a clear understanding of the issues, the available processes, their rights and responsibilities, and whether their issue falls within OEO's scope of authority. After this understanding has been developed, a decision can be made as to which approach is best suited to resolve the complaint. The following options can be considered:

### Informal Options within WSDOT:

- Assisting with an employee's issues;
- Counseling or coaching;
- Early resolution options;
- Mediation;
- Referral;
- Other.

### Formal Options within WSDOT:

- File a complaint

### Options external to WSDOT:

Referral to the following:

- Employee Advisory Service (EAS)
- The Washington State Human Rights Commission (HRC)
- The Federal Equal Employment Opportunity Commission (EEOC)
- The appropriate Union
- Other Agencies and Resources

## Complaint Procedures

### ***Formal Investigation Procedures***

An individual may request that OEO conduct a formal investigation of an alleged harassment or discriminatory act. In some instances management may decide that a formal department directed inquiry is required with or without consent from the complaining party. In such cases, management is listed as the complaining party. As with all inquiries, investigations will be handled as discretely as possible. *However, no guarantee of confidentiality can be made.*

#### Actions:

1. Obtain a statement from the complainant that clearly explains their allegations and basis for the alleged misconduct.
2. Determine if there are any short-term special needs or if any short term arrangements should be recommended to provide immediate relief to the complainant.

3. Review the allegations and supporting documentation, and determine jurisdiction. If accepted, assign an investigator. When a complaint is not accepted, the allegations and supporting documents will be forwarded to the appropriate agency.
4. Send the complainant's allegations to the respondent and the appropriate appointing authorities as part of the notification process.
5. Conduct an objective and impartial investigation. This includes collecting written statements and documents from respondent and witnesses, reviewing relevant files and documents, conducting follow-up interviews for clarification, and gathering responses to pertinent questions.
6. Prepare and submit an investigative report and findings. The OEO Administrator reviews and approves the final investigative report and findings.
7. Meet with the appropriate parties to out brief them regarding the investigation and apprise them of their right to the appeal process.

### **Actions by Appointing Authorities and Management:**

1. Make the final decision as to whether or not there is misconduct and take appropriate corrective/disciplinary action where such action is warranted.
2. Report action taken to OEO where there have been policy violations of the OEO Desk Manual.
3. Monitor the workplace to ensure that discriminatory, harassing and retaliatory behavior has ceased.

### **Informal Inquiry Procedures**

Often people who believe they have experienced discrimination or harassment, of some form or another, simply want it to end. For this reason, an informal process has been established to meet this need.

The informal inquiry will be handled as discretely as possible. However, no guarantee of confidentiality can be made. Under certain circumstances an informal inquiry may become a formal investigation or referred for resolution.

1. With the individual's permission, talk to relevant parties about options for resolution;
2. Provide the individual with reference information about available resources to deal with the complaint;
3. Help the individual determine who can best address their concerns and needs;
4. Assist the individual and other relevant parties, in conflict resolution techniques such as mediation, dispute resolution or other early resolution options.

### **Retaliation Prohibited**

Retaliatory action of any kind against any individual engaging in a protected activity covered by the policies in the OEO Desk Manual, such as, seeking an accommodation for a disability or for religious reasons, participating in the filing and investigation of a complaint of discrimination, harassment, or violation of policy or rules, is prohibited. Retaliation will be treated in the same manner as complaints of discrimination or harassment.

## **See Also**

DOT Executive Order E 1014.01, Equal Employment Opportunity, Affirmative Action, and Freedom from Discrimination and Sexual Harassment

DOT Policy Statement P 2007.01, Equal Opportunity and Affirmative Action

DOT Policy Statement P 2008.01, Freedom from Discrimination

DOT Policy Statement P 2009.01, Freedom from Sexual Harassment

Titles VI and VII of the Civil Rights Act of 1964, as amended

The Equal Pay Act of 1963

Age Discrimination in Employment Act of 1967, as amended

Section 504 of the Rehabilitation Act of 1973, as amended

Vietnam-Era Veterans Readjustment Act of 1972, as amended

Americans with Disabilities Act of 1990, as amended

Washington State Law against Discrimination, RCW 49.60, as amended  
June 7, 2006

Washington State Executive Orders 89-01 (Sexual Harassment); 93-07 (Affirmative Action) 96-04 (Reasonable Accommodation); and 98-02, Training and Protocols for State Investigators

